

1 J. Daniel Campbell, Bar No. 005395  
Daniel J. O'Connor, Bar No. 010081  
2 Gary L. Popham, Jr., Bar No. 022260  
**O'CONNOR & CAMPBELL, P.C.**  
3 7955 South Priest Drive  
Tempe, AZ 85284  
4 dan.campbell@occlaw.com  
dan.oconnor@occlaw.com  
5 gary.popham@occlaw.com  
602-241-7000

6 *Attorneys for Defendants Maricopa*  
7 *County, Ian Cranmer, William McLean,*  
8 *and Monica Scarpati*

9 **IN THE UNITED STATES DISTRICT COURT**  
10 **FOR THE DISTRICT OF ARIZONA**

10 ERNEST JOSEPH ATENCIO,  
11 surviving father of Ernest Marty  
12 Atencio, individually and on behalf of  
the following statutory beneficiaries  
13 of Ernest Marty Atencio: Rosemary  
Atencio, surviving mother of Ernest  
14 Marty Atencio; Joshua Atencio,  
surviving son of Ernest Marty  
15 Atencio; Joseph Atencio, surviving  
son of Ernest Marty Atencio; M.A., a  
minor and surviving son of Ernest  
16 Marty Atencio; and MICHAEL  
ATENCIO, Personal Representative  
17 of the Estate of Ernest Marty Atencio;  
and ROSEMARY ATENCIO,  
18 individually; JOSHUA ATENCIO,  
individually; JOSEPH ATENCIO,  
19 individually; and M.A., through his  
Next Friend, Eric Atencio,

20 Plaintiffs,

21 vs.  
22

23 SHERIFF JOSEPH ARPAIO and  
AVA ARPAIO, husband and wife;  
24 MARICOPA COUNTY, a public  
entity; JAIME CARRASCO and  
25 JANE DOE CARRASCO, husband  
and wife; ADRIAN DOMINGUEZ and  
26 JANE DOE DOMINGUEZ, husband

Case No.: 2:12-cv-02376-PHX-PGR

**DEFENDANT MARICOPA COUNTY'S  
REPLY IN SUPPORT OF ITS MOTION  
TO STRIKE PLAINTIFFS' STATEMENT  
OF FACTS APPLICABLE TO ALL  
DEFENDANTS**

(Assigned to the Honorable  
Paul G. Rosenblatt)

1 and wife; CHRISTOPHER FOSTER  
2 and JANE DOE FOSTER, husband  
3 and wife; ANTHONY HATTON and  
4 JANE DOE HATTON, husband and  
5 wife; CRAIG KAISER and JANE  
6 DOE KAISER, husband and wife;  
7 ANTHONY SCHEFFNER and JANE  
8 DOE SCHEFFNER, husband and  
9 wife; JOSE VAZQUEZ and JANE  
10 DOE VAZQUEZ, husband and wife;  
11 JASON WEIERS and JANE DOE  
12 WEIERS, husband and wife; IAN  
CRANMER and JANE DOE  
CRANMER, husband and wife;  
WILLIAM MCLEAN and JANE DOE  
MCLEAN, husband and wife;  
MONICA SCARPATI and JOHN  
DOE SCARPATI, husband and wife;  
CITY OF PHOENIX, a public entity;  
PATRICK HANLON and JANE DOE  
HANLON, husband and wife;  
NICHOLAS FRENCH and JANE  
DOE FRENCH, husband and wife.

Defendants.

Defendant Maricopa County properly moved under Local Rule 7.2(m) to strike Plaintiffs' Statement of Facts Applicable to All Defendants. This Court should grant the County's motion because Rule 56.1 does not permit a party moving for summary judgment to file more than one statement of facts.

**A. Defendant's Motion is Procedurally Proper.**

Plaintiffs contend that the County's Motion to Strike is procedurally improper because a motion to strike under Rule 12(f), Fed. R. Civ. P., only applies to pleadings. Plaintiffs are correct about Rule 12(f)'s applicability.<sup>1</sup> But

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<sup>1</sup> The cases Plaintiffs cite do not support their argument that the County's Rule 7.2(m) motion to strike is improper. Both *Foley v. Pont*, 2013 WL 782856 (D.Nev. 2013) and *S.A.R.L. Aquatonic-Laboratories PBE v. Marie Katelle, Inc.*, 2007 WL 1589562 (D.Ariz. 2007) dealt solely with motions to strike that were brought under Rule 12(f). The County agrees that Rule 12(f) is not the appropriate rule under which to move to strike a statement of facts in support of a summary judgment motion.

1 Rule 12(f) is not the sole authority for motions to strike. As the County's motion  
2 made clear, the County did not move to strike pursuant to Rule 12(f).<sup>2</sup> The  
3 motion was filed pursuant to Local Rule 7.2(m)(1) and is procedurally proper  
4 under that rule.

5 Local Rule 7.2(m)(1) provides that a motion to strike may be made "if it  
6 seeks to strike any part of a filing or submission on the ground that it is prohibited  
7 (or not authorized) by a statute, rule or court order." "A motion to strike is  
8 warranted if authorized by a federal rule. Rule 7.2(m) provides a number of  
9 examples that, if violated, allow a party to file a motion to strike. However, that list  
10 is not exhaustive." *Giddings v. Vison House Production, Inc.*, 2008 WL 2278134  
11 at \*2 (D.Ariz. 2008).

12 Here, Plaintiffs violated Rule 56.1 when, as the moving party, they filed two  
13 separate statements of fact. Plaintiffs' second statement of facts in support of  
14 their Motion for Partial Summary Judgment against Maricopa County, which  
15 Plaintiffs intended to be applicable to all defendants, is not authorized by Rule  
16 56.1. The County appropriately moved to strike this unauthorized statement of  
17 facts under Rule 7.2(m). *See Hardge v. Golden Eagle Distributors, Inc.*, 2010 WL  
18 5343285 at \*2 (D.Ariz. 2010) (striking Defendant's statement of facts pursuant to  
19 a motion to strike under Local Rule 7.2(m)).

20 **B. Local Rule 56.1 Permits the Moving Party to File Only One Statement**  
21 **of Facts.**

22 Local Rule 56.1 states that "any party filing a motion for summary  
23 judgment must file a statement of facts." Plaintiffs argue that Defendants read too  
24 much into the rule, and that the rule's purpose is to require that the moving party

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26 <sup>2</sup> Motion [Doc. 384] at p. 2, ll. 17-19.

1 set forth the facts in a document separate from the motion—not to limit the  
2 moving party to one statement of facts.<sup>3, 4</sup>

3 But the only interpretation of Rule 56.1 that makes sense is that it permits  
4 one statement of facts. Statutory interpretation begins with the plain language of  
5 the provision. *U.S. v. Hanousek*, 176 F.3d. 1116, 1120 (9th Cir. 1999) (citing  
6 *Consumer Prod. Safety Comm’n v. GTE Sylvania, Inc.*, 447 U.S. 102, 108  
7 (1980)). Rule 56.1 states that “any party filing a motion for summary judgment  
8 must file **a** statement of facts. . .” (emphasis added). A common sense reading of  
9 the rule’s plain language and context indicates that “a” means “one.” District  
10 Court decisions agree with this interpretation. *Allstate Insurance Co. v. Ford*  
11 *Motor Co.*, 2010 WL 1654145 at \*10 (D.Ariz. 2010) (“Rule 56.1 permits a party  
12 moving for summary judgment to file **only one separate statement of facts** in  
13 support of its motion. The statement is to be filed along with the motion for  
14 summary judgment.”) (emphasis added); *EEOC v. Creative Networks LLC*, 2008  
15 WL 5225807 at \* 1 (D.Ariz. 2008) (“A party filing a motion for summary judgment  
16 [] is required to file a statement detailing each material fact that the party relies  
17 on to support its motion. . . **Likewise**, the opposing party must have **one**  
18 statement . . .”) (emphasis added).

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21 <sup>3</sup> Plts.’ Resp. [Doc. 392] at p. 2, ll. 16-17.

22 <sup>4</sup> The case Plaintiffs cite in support of this argument does not help them. In *UMG*  
23 *Recordings, Inc.*, the parties disputed the applicability of a statutory provision.  
24 *UMG Recordings, Inc. v. Shelter Capital Partners, LLC*, 718 F.3d 1006 (9th Cir.  
25 2013). The court discussed the statute’s two definitions of the same term—one  
26 a broad definition and the other narrow. The court noted that if Congress had  
intended to include limitations in the broad definition, it would have done so  
“expressly and unambiguously, as it did in the narrower definition.” *Id.* at 1020.  
Plaintiffs extrapolate broadly from this one sentence in the opinion and  
illogically conclude that with respect to Local Rule 56.1, “had the drafters of the  
rule intended to limit parties to ‘one’ or a ‘single’ statement of facts, they would  
have said so.” See Plts.’ Resp. at p. 2, ll. 17-19.

1 In other instances in the Local Rules, no dispute exists that “a” means  
2 “one.” For example, Local Rule 7.2(c) provides that a moving party may file “a”  
3 memorandum of points and authorities in support of their motion; the opposing  
4 party may file “a” responsive memorandum; and after receiving the responsive  
5 memorandum the moving party may file “a” reply memorandum. Applying  
6 Plaintiffs’ argument to general motion practice under Local Rule 7.2 produces  
7 illogical results. If the word “a” does not mean “one,” then for every motion a  
8 party files on an issue: (1) the moving party could file a motion and unlimited  
9 supplemental motions, (2) the responding party could a response and unlimited  
10 supplemental responses, and (3) the moving party could file a reply and unlimited  
11 supplemental replies.

### 12 **CONCLUSION**

13 In support of their Motion for Partial Summary Judgment against Maricopa  
14 County, Plaintiffs filed two separate documents entitled “Statement of Facts”  
15 [Docs. 359 and 360]. Rule 56.1 permits the moving party to file only one  
16 Statement of Facts. Accordingly, Plaintiffs’ Statement of Facts applicable to all  
17 Defendants [Doc. 359] should be stricken.

18 DATED this 16<sup>th</sup> day of October, 2014.

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20 **O’CONNOR & CAMPBELL, P.C.**

21  
22 By: /s/ Gary L. Popham, Jr.  
23 J. Daniel Campbell  
24 Daniel J. O’Connor  
25 Gary L. Popham, Jr.  
26 *Attorneys for Defendants*  
*Maricopa County, Ian Cranmer,*  
*William McLean, and Monica*  
*Scarpati*

1 **CERTIFICATE OF SERVICE**

2 I hereby certify that on October 16, 2014, I electronically filed the foregoing  
3 with the Clerk of the Court for the U.S. District Court, District of Arizona, using  
4 the CM/ECF System. A Notice of Electronic Filing will be served to the following  
5 registered participants:

6 Michael C. Manning  
7 Larry J. Wulkan  
8 Stefan M. Palys  
9 Jennifer L. Allen  
10 Blair H. Moses  
STINSON LEONARD STREET LLP  
1850 North Central Avenue, Suite 2100  
Phoenix, AZ 85004  
*Attorneys for Plaintiffs*

Lisa S. Wahlin  
Andrew M. Kvesic  
RILEY CARLOCK & APPLEWHITE  
One North Central Avenue, Suite 1200  
Phoenix, AZ 85004  
*Attorneys for Defendants Arpaio,  
Carrasco, Dominguez, Foster, Kaiser,  
Scheffner, Vazquez, and Weiers*

11 Christina G. Retts  
12 Kathleen L. Wieneke  
13 STRUCK WIENEKE & LOVE, PLC  
14 3100 West Ray Road, Suite 300  
Chandler, AZ 85226  
*Attorneys for Defendants City of  
Phoenix, French and Hanlon*

Sarah L. Barnes  
Robert M. Moore  
BROENING OBERG  
WOODS & WILSON, PC  
1122 East Jefferson Street  
Phoenix, AZ 85034  
*Attorneys for Defendant Hatton*

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16 By: /s/ Amanda Bennett  
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